

Weldon Spring Site  
Federal Facility Agreement

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII**

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

**UNITED STATES DEPARTMENT OF ENERGY**

**MISSOURI DEPARTMENT OF NATURAL RESOURCES**

IN THE MATTER OF:

The United States Department  
of Energy's Weldon Spring Site,  
St. Charles, Missouri

Docket No. CERCLA-07-2006-0161

**FEDERAL FACILITY AGREEMENT FOR  
THE WELDON SPRING SITE**

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**I. PRELIMINARY STATEMENT**

- 1 On January 28, 1992, the United States Environmental Protection Agency, Region 7 (EPA), and the United States Department of Energy (DOE), entered into an agreement captioned First Amended Federal Facility Agreement (FIRST AMENDED FFA). The FIRST AMENDED FFA addressed site investigation, cleanup alternative evaluations and remedy selection and implementation for DOE's Weldon Spring Site (SITE). Remedial action at the SITE is now substantially complete and, based on information available as of the EFFECTIVE DATE of this AGREEMENT, EPA, DOE and MDNR agree that the SITE remedy decisions and plans for implementation are protective of human health and the environment.
- 2 DOE has transferred the SITE to its Office of Legacy Management, which is charged with responsibility for long-term surveillance and maintenance activities at the SITE. While the FIRST AMENDED FFA addressed long-term operation and maintenance of the cleanup actions, its primary focus was on activities relating to selection and implementation of remedial actions. DOE has requested that we replace the FIRST AMENDED FFA with a more streamlined agreement focusing on long-term site management activities.
- 3 The Missouri Department of Natural Resources (MDNR) now desires to have a more formal role in overseeing long term management activities at the SITE. Therefore, EPA, DOE and the MDNR have agreed to enter into this Federal Facility Agreement for the Weldon Spring Site (AGREEMENT). EPA, DOE and the MDNR will collectively be referred to as the PARTIES.

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4 The Long-Term Surveillance and Maintenance Plan has been finalized pursuant to the  
FIRST AMENDED FFA. EPA and DOE intend to terminate the FIRST AMENDED  
FFA when this AGREEMENT becomes effective.

5 This AGREEMENT is based upon the information available to the PARTIES on the  
Effective Date of this AGREEMENT, and is entered into by the PARTIES without trial  
or adjudication of any issues of fact or law.

## II. JURISDICTION

6 EPA enters into this AGREEMENT pursuant to Section 120(e) of the Comprehensive  
Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C.  
§ 9620(e), as amended by the Superfund Amendments and Reauthorization Act of 1986  
(SARA), Pub. L. 99-499 (hereinafter referred to as CERCLA) and Executive Order  
12580.

7 DOE enters into this AGREEMENT pursuant to Section 120(e) of CERCLA, Executive  
Order 12580, and the Atomic Energy Act of 1954 (AEA), as amended, 42 U.S.C. § 2201.

8 The MDNR enters into this AGREEMENT pursuant to Sections 120(e) of CERCLA, 42  
U.S.C. § 9620(e) and Title 10 of the Code of State Regulations, Chapter 25 (hereinafter  
“10 CSR 25”) and Chapter 80 (hereinafter “10 CSR 80”).

## III. PARTIES BOUND

9 The terms of this AGREEMENT shall apply to and be binding upon the PARTIES and  
upon their successors and assigns. The undersigned representative of each of the  
PARTIES certifies that he or she is fully authorized to enter into the terms and conditions  
of this AGREEMENT and to bind legally that party to it. DOE shall provide a copy of

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this AGREEMENT to all contractors and subcontractors retained to perform Work pursuant to this AGREEMENT and to the present owner of any property upon which any Work under this AGREEMENT is performed.

#### **IV. PURPOSE**

- 10 The general purposes of this Agreement are to:
- 10.1 Provide for proper and effective long-term protection of public health, welfare and the environment;
  - 10.2 Establish a procedural framework and schedule for conducting appropriate actions at the SITE, over the long term, in accordance with CERCLA, the NCP, Superfund guidance and policy, and state laws and regulations;
  - 10.3 Facilitate cooperation, exchange of information and participation of the PARTIES in such actions; and
  - 10.4 Facilitate the communication with and the involvement of other stakeholders in the implementation of long-term actions necessary to protect human health and the environment.

#### **V. DEFINITIONS**

- 11 Except as otherwise explicitly stated herein, terms used in this AGREEMENT which are defined in CERCLA or the NCP shall have the meaning as defined in CERCLA or the NCP, respectively. The following definitions shall apply for purposes of this AGREEMENT:
- 11.1 "AGREEMENT" means this Federal Facility Agreement for the Weldon Spring Site and all Appendices attached to this AGREEMENT.
  - 11.2 "Authorized Representative" means a person designated to act on behalf of a Party to this

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AGREEMENT , including, inter alia, contractors retained to perform Work at or relating to the Site.

- 11.3 “CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq.
- 11.4 “Day” means calendar day, unless business day is specified. Any Submittal, Written Notice of Position or written Statement of Dispute that, under the terms of this AGREEMENT, would be due on a Saturday, Sunday, federal holiday or Missouri state holiday shall be due on the next business day.
- 11.5 “DOE” means the United States Department of Energy and any successor departments or agencies of the United States.
- 11.6 “EPA” means the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- 11.7 “First Amended Federal Facility Agreement” or “First Amended FFA” means the agreement entered into by DOE and EPA on January 28, 1992, EPA Docket no. CERCLA-VII-85-F-0057.
- 11.8 “LTS&M Plan” means the Long-Term Surveillance & Maintenance Plan prepared by DOE which describes the activities necessary to ensure protection of human health and the environment following completion of remedial actions at the SITE, attached hereto as Appendix A, and that document as it is modified from time to time as provided in this AGREEMENT.
- 11.9 “MDNR” means the Missouri Department of Natural Resources and any successor

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departments or agencies of the State of Missouri.

- 11.10 “National Contingency Plan” or “NCP” means the implementing regulations for CERCLA found in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300.
- 11.11 “Site” means the properties under the custody and accountability of DOE known as the Weldon Spring Site, including the former Weldon Spring Chemical Plant, the former Weldon Spring Quarry, the former Raffinate Pits, and all other areas contaminated by the migration of a hazardous substance, pollutant or contaminant from any of these properties.
- 11.12 “Submittal” means each document, report, schedule, deliverable, work plan or other item to be submitted to EPA or the MDNR pursuant to this AGREEMENT.
- 11.13 “Work” means all activities DOE is required to perform under this AGREEMENT.
- 11.14 “Written Notice of Position” means a written statement by a Party of its position with respect to any matter about which any other Party may initiate dispute resolution pursuant to Section XXII of this AGREEMENT.

## **VI. FINDINGS AND CONCLUSIONS**

The following facts form the basis of this AGREEMENT.

- 12 In July 1987, the EPA placed the Weldon Spring Quarry on the National Priorities List (NPL), developed pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. § 9605(a)(8)(B). EPA added the Chemical Plant and Raffinate Pits to the NPL in March 1989.
- 13 On January 28, 1992, DOE and EPA entered into the First Amended FFA pursuant to



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Section 120(e)(1) of CERCLA, 42U.S.C. § 9620(e)(1).

- 14 Pursuant to the First Amended FFA, the DOE conducted a series of response actions at the SITE in accordance with CERCLA, and prepared the LTS&M Plan describing the actions necessary to maintain the protectiveness of these response actions over time.
- 15 DOE conducted removal actions on an expedited basis to mitigate offsite migration of contaminants and improve site stability. These actions included: 1) surface water management and treatment; 2) consolidation, treatment, and disposal of chemicals; 3) asbestos abatement; 4) removal and shipment of PCB transformers for treatment and disposal; and, 5) decontamination, demolition, and temporary storage of buildings and process structures.
- 16 DOE conducted response actions in accordance with the following decision documents:
  - 16.1 Quarry Bulk Waste ROD, September 1990 – Approximately 144,000 cubic yards of contaminated materials and soils were excavated, transported, sorted, and placed in temporary storage pending a final decision on source control.
  - 16.2 Chemical Plant Area ROD, September 1993 – This established onsite containment as the principal source control remedial action. Under this operable unit approximately 1.5 million cubic yards of treated raffinate sludges, quarry bulk wastes, contaminated soils, buildings, equipment, and debris from the Quarry and Chemical Plant Area were placed in an engineered onsite disposal cell. The ROD also established soil cleanup goals for the Chemical Plant area consistent with reasonably anticipated land use.
  - 16.3 Southeast Drainage Engineering Evaluation/Cost Analysis, September 1996 – This established the cleanup goals for the soil and sediment within the drainage consistent with

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- reasonably anticipated land use. Excavated soil and sediment were placed in the onsite disposal cell.
- 16.4 Quarry Residuals ROD, September 1998 – Under this operable unit the quarry was restored by grouting fractures and backfilling with low permeability soils. Long-term groundwater monitoring, well field contingency plans, and institutional controls to restrict groundwater use were also established.
- 16.5 Groundwater at the Chemical Plant Area Interim ROD, September 2000 – Under this action, a portion of the TCE contaminated groundwater was treated using in-situ chemical oxidation. Also, additional field tests were undertaken to examine the feasibility of enhancing pump and treat alternatives.
- 16.6 Groundwater at the Chemical Plant Area Final ROD, January 2004 – This established Monitored Natural Attenuation (MNA) as the method to achieve groundwater and spring water restoration. Cleanup goals, performance objectives, and use restrictions were established.
- 16.7 Explanation of Significant Differences, February 2005 – This identified the specific land and resource use restrictions necessary to maintain the protectiveness over the long-term for all site areas affected by the response actions described above.
- 17 Hazardous substances, pollutants, and contaminants, within the meaning of Sections 101(14) and 101(33), of CERCLA, 42 U.S.C. §§ 101(14) and 101(33), are present at and have been disposed of at the SITE.
- 18 Hazardous substances released at or from the SITE remain at levels above those that would allow for unlimited use and unrestricted exposure on properties under the

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jurisdiction, custody or control of DOE and the U.S. Department of the Army and property owned or controlled by agencies of the State of Missouri, including the Missouri Department of Conservation (MDC) and Missouri Department of Transportation (MoDOT).

## VII. DETERMINATIONS

Based upon the foregoing findings and conclusions, the PARTIES have made the following determinations.

- 19 The SITE is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9);
- 20 There has been a release and there is a threatened release of hazardous substances into the environment as defined at Section 101(22) of CERCLA, 42 U.S.C. § 9601(22) at the SITE;
- 21 The SITE is under the jurisdiction, custody or control of DOE. The SITE is a federal facility within the meaning of Section 120 of CERCLA, 42 U.S.C. § 9620.
- 22 The actions required to be taken pursuant to this AGREEMENT are necessary to protect the public health and welfare and the environment and are consistent with the National Contingency Plan; and,
- 23 The schedule for completing the actions required by this AGREEMENT complies with the requirements of Section 120(e) of CERCLA, 42 U.S.C. § 9620(e).

## VIII. PERFORMANCE OF THE WORK

It is hereby agreed by the PARTIES that DOE shall conduct the following:

- 24 A comprehensive program designed to ensure the long-term effectiveness of the remedies

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that have been put in place at the SITE and to take any other appropriate remedial actions as necessary to protect the human health and the environment. The activities include:

- 24.1 Conducting operation, inspection, and maintenance of the engineered controls;
- 24.2 Conducting maintenance and inspection of the land and groundwater use restrictions and other institutional controls necessary for the protectiveness of the remedies;
- 24.3 Conducting long-term monitoring of air, groundwater, biota or other media necessary to demonstrate the performance, effectiveness, or protectiveness of the remedies;
- 24.4 Identifying and implementing actions to optimize long-term surveillance and maintenance activities;
- 24.5 Identifying and meeting all regulatory requirements for the post-remedial action site conditions;
- 24.6 Identifying and meeting all natural, cultural, and historical resource management requirements;
- 24.7 Ensuring that budgeting, funding, and personnel requirements appropriate to sustain long-term surveillance and maintenance needs are met;
- 24.8 Ensuring that public involvement, including education, outreach, notice, and informational systems are appropriate to sustaining the long-term effectiveness of the remedies;
- 24.9 Ensuring that information and records management requirements are appropriate and designed to be sustainable over the long-term;
- 24.10 Developing all plans, manuals, and reports, including revisions to these documents, which are either required or appropriate to conducting the long-term maintenance and

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surveillance activities; and

- 24.11 All other actions necessary to protect human health and the environment. The LTS&M Plan should be promptly revised to reflect any such actions not then addressed in the LTS&M Plan.
- 25 The DOE is responsible for implementing, maintaining, reporting on, and enforcing the institutional controls. Although DOE may transfer its procedural responsibilities to another party by contract, property transfer agreement, or through other means, the DOE shall retain ultimate responsibility for remedy integrity.
- 26 The specific long-term surveillance and maintenance activities for the SITE shall be set forth in the LTS&M Plan, the version dated July 2005 of which is attached hereto as Appendix A. The LTS&M Plan shall be modified in accordance with the requirements of this AGREEMENT. DOE shall make routine or ministerial types of revisions to the LTS&M Plan, such as updating points of contact, and submit these changes to EPA and the MDNR. All major changes shall be submitted to EPA and the MDNR for review and approval. Any modifications of the LTS&M Plan made in accordance with this AGREEMENT shall be incorporated by reference into the AGREEMENT.
- 27 DOE shall submit the following deliverables, meeting the requirements set forth in the LTS&M Plan, to EPA and the MDNR for review and comment on an annual basis, beginning no later than ninety (90) days after the first anniversary of the effective date of this AGREEMENT:
- 27.1 Annual Monitoring Report, including recommendations for revising the LTS&M Plan based on information obtained by the groundwater monitoring, and

27.2 Annual Inspection Report, including recommendations for revising the LTS&M Plan

based on information obtained by the annual inspection.

28 At the time the Periodic Review Reports are submitted, DOE shall submit for review and approval recommendations for revising the LTS&M Plan based on information obtained when conducting the periodic review.

29 EPA and the MDNR shall be able to request that DOE revise the LTS&M Plan to comply with the criteria set forth in Paragraph 24, above, at any time, in accordance with Paragraph 44 (Modification of Final Documents). Any disagreement as to the requested revisions shall be considered a dispute subject to Section XXII, Resolution of Disputes. All documents or revisions to documents approved pursuant to this AGREEMENT, including any revisions to the LTS&M Plan, shall be incorporated into and become an enforceable part of this AGREEMENT.

#### **IX. INSTITUTIONAL CONTROLS**

30 In addition to any requirements set forth in the LTS&M Plan, commencing on the Effective Date of this AGREEMENT, DOE agrees to refrain from either using or allowing the use of all portions of the SITE, or such other property, under its jurisdiction, custody or control, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures which have been performed at the SITE or which are performed pursuant to this AGREEMENT.

#### **X. PERIODIC REVIEW**

31 DOE shall conduct all studies and investigations necessary to conduct reviews of whether the response actions conducted at the SITE are protective of human health and the

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environment, at least every five years as required by Section 121(c) of CERCLA, 42

U.S.C. § 9621(c) and any applicable regulations. DOE shall submit periodic reviews to EPA and the MDNR for review and comment.

32 If upon such review it is the judgment of EPA in consultation with MDNR that additional action or modification of the remedial action is appropriate in accordance with the requirements of CERCLA and the NCP, EPA shall seek modification of the work pursuant to Paragraph 44 (Modification of Final Documents) or Section XII (Additional Work or Modification to Work) as appropriate.

33 If EPA determines further response actions for the SITE are necessary, DOE shall undertake such further response actions in a manner consistent with the requirements of CERCLA, the NCP, and applicable EPA guidance. Any such Work approved pursuant to this Section shall be completed in accordance with the standards, specifications, and schedule determined or approved by EPA, after consultation with the MDNR. DOE may invoke the procedures set forth in Section XXII (Dispute Resolution) to dispute (1) EPA's determination that the remedial action is not protective of human health and the environment, or (2) EPA's determination of the need for further response actions.

34 If DOE is required to perform the further response actions pursuant to Paragraph 33, it shall submit appropriate plans and documentation for such Work, including revisions to the LTS&M Plan, to EPA and the MDNR in accordance with the procedures set forth in Section XI (Consultation with EPA and the MDNR). Revisions to the LTS&M Plan shall be submitted for review and approval.

**XI. CONSULTATION WITH EPA AND THE MDNR**

35 Documents Submitted for Review and Comment – Unless the PARTIES mutually agree to another time period, all documents submitted to EPA and the MDNR for review and comment shall be subject to a 60-day review period. Review of any document by the EPA and the MDNR may concern all aspects of the document (including completeness) and should include, but not be limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP, MDNR-identified ARARs, and any pertinent guidance or policy promulgated by the EPA or the MDNR. Comments by the EPA and the MDNR shall be provided with adequate specificity so that DOE may respond to the comments and, if appropriate, make changes to the document. In cases involving complex or unusually lengthy documents, EPA or the MDNR may extend the 60-day comment period for an additional 20 days by written notice to DOE prior to the end of the 60-day period. The comment period may be extended for a longer duration by written agreement of the PARTIES. On or before the close of the comment period, EPA and the MDNR shall transmit their written comments to DOE. Within 60 days of receipt of comments from EPA and/or MDNR or close of the applicable review period, whichever is earlier, DOE shall transmit to EPA and the MDNR its written response to all comments.

36 Documents Submitted for Review and Approval– Unless the PARTIES mutually agree to another time period, all documents submitted to EPA and the MDNR for review and approval shall be subject to a 60-day review period. Review of any document by the EPA and the MDNR may concern all aspects of the document (including completeness) and



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should include, but not be limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP, MDNR-identified ARARs, and any pertinent guidance or policy promulgated by the EPA or the MDNR. Any comments submitted by the EPA and the MDNR shall be provided with adequate specificity so that DOE may respond to the comment and, if appropriate, make changes to the document. In cases involving complex or unusually lengthy documents, EPA or the MDNR may extend the 60-day review period for an additional 20 days by written notice to DOE prior to the end of the 60-day period. The review period may be extended for a longer duration by written agreement of the PARTIES. Within 60 days of receipt of comments from EPA and/or MDNR or the close of the applicable review period, whichever is earlier, DOE shall transmit to EPA and the MDNR a revised document and DOE's response to all written comments. While the resulting document shall be the responsibility of DOE, it shall be the product of consensus of the PARTIES to the maximum extent possible. DOE may extend the 60-day period for either responding to comments or for submitting a revised document for an additional 20 days by providing notice to EPA and the MDNR. In appropriate circumstances, this time period may be further extended in accordance with Section XX (Extensions) hereof.

- 37 Within sixty (60) days of receipt of a revised document which was submitted for review and approval pursuant to this AGREEMENT, EPA, after an opportunity to consult with the MDNR, shall either: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) disapprove, in whole or in part, the submission, directing that DOE modify the submission; or (d) any combination of the above. Any

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part of any submission not specifically approved, or approved upon conditions, shall be considered disapproved.

38 In the event of approval or approval upon conditions pursuant to Paragraph 37, DOE shall proceed to take any action required by the document as approved by EPA, subject only to its right to invoke the Dispute Resolution procedures set forth in Section XXII (Resolution of Disputes) with respect to the conditions made by EPA.

39 Upon receipt of a notice of disapproval pursuant to Paragraph 37, DOE shall, within forty-five (45) days, or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the document for review and approval. Any stipulated penalties applicable to the submission, as provided in Section XXIII (Stipulated Penalties), shall accrue during this correction period but shall not be payable unless the resubmission is disapproved as provided in Paragraphs 41 and 42.

40 Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 37, DOE shall proceed to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve DOE of any liability for stipulated penalties under Section XXIII (Stipulated Penalties).

41 In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require DOE to correct the deficiencies, in accordance with the preceding Paragraphs and to seek stipulated penalties as provided in Section XXIII (Stipulated Penalties).

42 If, upon resubmission, a document is disapproved by EPA due to a material defect, DOE shall be deemed to have failed to submit such document timely and adequately, unless

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DOE invokes the dispute resolution procedures set forth in Section XXII (Resolution of Disputes) and EPA's action is overturned pursuant to that Section. The provisions of Section XXII (Resolution of Disputes) and Section XXIII (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required.

43 All documents required to be submitted for review and approval under this AGREEMENT shall, upon approval by EPA in consultation with MDNR, be enforceable under this AGREEMENT. In the event EPA approves a portion of a document required to be submitted under this AGREEMENT, the approved or modified portion shall be enforceable under this AGREEMENT.

44 Modification of Final Documents – EPA, the MDNR or DOE may seek to modify the LTS&M Plan and any document approved under this AGREEMENT as provided in Paragraphs 44.1 and 44.2 below. Either EPA or DOE may seek to modify any document in addition to the LTS&M Plan which became final under the First Amended FFA, as provided in Paragraphs 44.1 and 44.2, below.

44.1 EPA, the MDNR, or DOE, as specified above, may seek to modify a final document if it determines, based on new information (i.e., information that became available, or conditions that became known, after the document became final) that the requested modification is necessary. EPA, the MDNR, or DOE may seek such a modification by submitting a concise written request to the Project Managers of the other PARTIES. The request shall specify the

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nature of, and rationale for, the requested modification and how the request is based on significant new information.

44.2 In the event that a consensus is not reached by the Project Managers on the need for a modification, the Party seeking the modification may invoke dispute resolution to determine if such modification shall be conducted. Modification of a report shall be required only upon a showing that:

44.2.1 The requested modification is based on significant new information, and either

44.2.2 The requested modification could be of significant assistance in evaluating impacts on the public health or the environment, in evaluating the selection of remedial alternatives, or in protecting human health and the environment, or

44.2.3 The requested modification could provide a significant remedy optimization or efficiency without decreasing protection of human health and the environment.

44.3 For documents which became final under the First Amended FFA, only those portions of the document specifically relating to the requested modification shall be subject to dispute resolution.

45 DOE shall also revise the LTS&M Plan consistent with modifications of other documents pursuant to this provision. Any such revised LTS&M Plan shall be submitted to EPA and the MDNR for review and approval.

46 Nothing in this Subpart shall alter either EPA's ability to determine that further Work is necessary pursuant to Section X (Periodic Review) or EPA's or the MDNR's ability to request the performance of Additional Work pursuant to Section XII of this AGREEMENT (Additional Work).

**XII. ADDITIONAL WORK OR MODIFICATION TO WORK**

- 47 In the event that the EPA, after consultation with the MDNR, determines that Additional Work or Modification to Work is necessary to accomplish the objectives of this AGREEMENT, EPA shall notify DOE, in writing. DOE agrees, subject to the dispute resolution procedures set forth in Section XXII (Resolution of Disputes), hereof, to implement all such Work, and to revise the LTS&M Plan, as appropriate, to reflect the Additional Work. Any such revisions of the LTS&M Plan shall be submitted for review and approval in accordance with Paragraph 36.
- 48 Any Additional Work or Modification to Work approved pursuant to this Section shall be completed in accordance with the standards, specifications, and schedule determined or approved by EPA and the MDNR. If any Additional Work or Modification to Work will adversely affect Work scheduled or will require significant revisions to an approved Work Plan, the EPA and the MDNR shall be notified immediately of the situation followed by a written explanation within five (5) business days of the initial notification.

**XIII. CREATION OF DANGER**

- 49 In the event the EPA in consultation with MDNR determines that activities conducted pursuant to this AGREEMENT, or any other circumstances or activities, may present an imminent and substantial endangerment to the public health or welfare or the environment, the EPA may, on its own initiative or upon request by the MDNR, order DOE to stop further implementation of Work under this AGREEMENT for such period of time as necessary to abate the danger. Within one week of any order to stop work, EPA will provide, in writing, a statement of the basis for the stop work order. Any

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disagreement as to the appropriateness of an order to stop work under this provision shall be subject to the dispute resolution provisions of Section XXII (Resolution of Disputes) of this AGREEMENT. However, even if DOE invokes dispute resolution, DOE shall immediately comply with the stop work order and continue in compliance with the order until either the order is lifted or the matter is resolved by dispute resolution. EPA may direct DOE to stop further implementation of this AGREEMENT for such period of time as needed to abate the danger.

**XIV. MONITORING AND QUALITY ASSURANCE**

- 50 DOE shall use Quality Assurance, Quality Control (QA/QC) and chain-of-custody procedures during all field investigation, monitoring, sample collection, and laboratory analysis activities in accordance with EPA guidance and the Uniform Federal Policy for Quality Assurance Project Plans, EPA-505-B-04-900A.
- 51 Within 90 days of the Effective Date of this AGREEMENT, DOE shall make any appropriate changes to the Quality Assurance Project Plan (QAPP) for the SITE based on the activities identified in the LTS&M Plan and a review of current guidance and submit the QAPP to EPA and the MDNR for review and comment.
- 52 All laboratories analyzing samples pursuant to this AGREEMENT shall perform, at DOE's expense, analyses of samples provided by EPA or MDNR to demonstrate the quality of each such laboratory's analytical data. The number of QC samples from EPA or MDNR shall be based upon the number of samples needed for those agencies to verify the satisfactory performance of the DOE laboratory.

53 DOE shall ensure that EPA and the MDNR representatives are allowed access, for auditing purposes, to all laboratories and personnel utilized by DOE for sample collection and analysis and other field work.

#### **XV. SAMPLING AND DATA/DOCUMENT AVAILABILITY**

54 DOE shall make available to EPA and the MDNR, all quality-assured results of sampling, tests and other data collection, including all data and quality assurance documentation obtained by it, or on its behalf, with respect to the implementation of this AGREEMENT in a manner to be agreed to by the PARTIES.

55 At the request of EPA or the MDNR, DOE shall allow the Party making the request to collect split or duplicate samples of all samples collected pursuant to this AGREEMENT. To the maximum extent practicable, DOE shall notify EPA and the MDNR at least twenty (20) business days prior to any sample collection. If it is not possible to provide twenty (20) business days advance notice, DOE shall provide as much notice as possible that samples will be collected. EPA and the MDNR shall make all quality-assured results available to each other and to DOE within thirty (30) days of receipt of such results.

#### **XVI. CONFIDENTIAL BUSINESS INFORMATION**

56 DOE may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this AGREEMENT provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Analytical and other data specified in Section 104(e)(7)(F) of CERCLA, 42 U.S.C. § 9604(e)(7)(f), shall not be claimed as confidential by DOE. EPA shall disclose information covered by a business confidentiality claim only to the extent permitted by,

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and by means of the procedures set forth at, 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to DOE.

57 DOE may assert a business confidentiality claim pursuant to § 260.430, Revised Statutes of Missouri (“RSMo”), with respect to part or all of any information submitted to the MDNR pursuant to this AGREEMENT, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Analytical and other data specified in Section 104(e)(7)(F) of CERCLA, 42 U.S.C § 9604(e)(7)(f), shall not be claimed as confidential by DOE. The MDNR shall disclose information covered by a business confidentiality claim only to the extent permitted by, and by means of the procedures set forth at, § 260.430, RSMo. If no such claim accompanies the information when it is received by the MDNR, the MDNR may make it available to the public without further notice to DOE.

58 Information, records, or other documents produced by DOE as classified within the meaning of and in conformance with the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2011 et. seq., shall not be available to the public. In addition, these data, documents, records, or files which could otherwise be withheld pursuant to the Freedom of Information Act (FOIA), 5 U.S.C., § 552(a), unless expressly authorized for release by the originating party, shall be handled in accordance with those regulations. Other affected parties (e.g., contractors) may assert a confidentiality claim covering all or part of any information requested under this AGREEMENT. Such claims will be afforded the same protection pursuant to 40 C.F.R. Part 2 as provided by DOE.



**XVII. PROJECT MANAGERS**

59 The following individuals are designated as the Project Managers for the respective Parties:

For EPA:

Daniel R. Wall  
Superfund Division  
U.S. Environmental Protection Agency, Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101  
Telephone number (913) 551-7710  
Fax number (913) 551-7063

For DOE:

Thomas Pauling  
U.S. Department of Energy  
2597 B <sup>3</sup>/<sub>4</sub> Road  
Grand Junction, CO 81503  
Telephone number (970) 248-6048  
Fax number (970) 248-6023

For the MDNR:

Larry Erickson (Federal Facilities Section Chief or designee)  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, MO 65102-0176  
Telephone number (573) 751-3907  
Fax number (573) 526-5268

60 All verbal notices and written documents, including, but not limited to written notices, reports, plans, and schedules, requested or required to be submitted pursuant to this AGREEMENT shall be directed to the designated Project Managers. To the maximum extent possible, all communications between the PARTIES concerning the terms and conditions of this AGREEMENT shall be directed through the Project Managers. Each

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Project Manager shall be responsible for assuring that all communications from the other Project Managers are appropriately disseminated and processed by the entities which the Project Managers represent.

- 61 The EPA and the MDNR Project Managers and their respective designees shall have the authority to:
- 61.1 take samples, request split samples of DOE samples and ensure that Work is performed properly and pursuant to EPA protocols as well as pursuant to the Attachments and plans incorporated into this AGREEMENT;
  - 61.2 observe all activities performed pursuant to this AGREEMENT, take photographs and make such other reports on the progress of the Work as the Project Manager deems appropriate;
  - 61.3 review records, files and documents relevant to this AGREEMENT; and,
  - 61.4 recommend and request minor field modifications to the Work to be performed pursuant to this AGREEMENT, or in techniques, procedures or design utilized in carrying out this AGREEMENT, which are necessary to the completion of the project provided each Project Manager concurs in the modification.
- 62 Any Party may change its designated contact by providing timely written notice to the other PARTIES of the change.

#### **XVIII. ACCESS**

- 63 DOE shall provide access to the other PARTIES to all property under the jurisdiction, custody or control of DOE upon which any activities are being conducted or have been conducted pursuant to either this AGREEMENT or the FIRST AMENDED FFA such

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that all PARTIES and their Authorized Representatives are able to enter and move freely about such property at all reasonable times for the purposes related to activities conducted pursuant to this AGREEMENT, including, inter alia, the following:

- 63.1 Inspecting and copying records, files, photographs, operating logs, contracts and other documents relating to this response action;
  - 63.2 Reviewing the status of activities being conducted pursuant to this AGREEMENT;
  - 63.3 Collecting such samples or conducting such tests as EPA or the MDNR determines are necessary or desirable to monitor compliance with the terms of this AGREEMENT or to protect human health or the environment;
  - 63.4 Using sound, optical or other types of recording equipment to record activities which have been or are being conducted pursuant to this AGREEMENT; and,
  - 63.5 Verifying data and other information submitted by DOE pursuant to this AGREEMENT.
- 64 With respect to property under the jurisdiction, custody or control of the United States Department of the Army (Army), DOE shall seek an agreement authorizing access for DOE, EPA and MDNR, and their representatives. With respect to property not under the jurisdiction, custody or control of either DOE or Army, unless otherwise agreed by EPA and MDNR, DOE shall seek agreements providing access to such property for DOE, EPA and MDNR, and their representatives. DOE shall also seek the property owner's written agreement that no conveyance of title, easement, or other interest in the property shall be consummated without provisions for the continued operation of such wells, treatment facilities, or other response actions on the property. The access agreements shall also provide that the owners of any property where monitoring wells, pumping wells,

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treatment facilities or other response actions are located shall notify DOE, the MDNR, and the EPA by certified mail, at least thirty (30) days prior to any conveyance, of the property owner's intent to convey any interest in the property and of the provisions made for the continued operation of the monitoring wells, treatment facilities, or other response actions installed pursuant to this Agreement.

65 DOE shall use all available authorities, including authorities under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), to obtain access necessary to conduct activities under this AGREEMENT. Access shall be obtained to these properties in time so as not to have lack of access delay completion of any activity performed under this AGREEMENT.

#### **XIX. RECORD PRESERVATION**

66 Except as otherwise agreed by the Parties, DOE shall retain Site related records that relate in any manner to the performance of the Work under either this AGREEMENT or the First Amended FFA. DOE shall retain such records in accordance with all applicable Federal record retention laws, regulations, and policies, including DOE's records retention schedules. DOE shall provide EPA and MDNR with copies of any updates to the Weldon Spring Site inactive records inventory. DOE agrees to cooperate with EPA and MDNR if either seeks access to the records, including providing any necessary approvals for the review and copying of any records after the records have been transferred to a central records storage facility.

67 The PARTIES shall attempt to reach agreement as to the continued need for records prior to the end of the records' applicable record retention periods. If such agreement is not reached, DOE shall provide written notice to EPA and MDNR when a record retention

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period has elapsed. The notice shall contain the following information: (1) the records data that the National Archives sends to DOE with respect to documents covered by the Notice of Eligibility for Disposal, and (2) the DOE contact point with respect to the records, if it is someone other than the DOE Project Manager. EPA and MDNR shall have 60 days from receiving this notice to provide any comments and recommendations as to the continued need for some or all of the documents. If DOE decides not to retain any records that EPA or MDNR recommend be kept, DOE shall so notify EPA and MDNR at least ten (10) business days prior to authorizing the destruction of these records. DOE shall, as requested by EPA or MDNR, either retain these records for an additional time period or transfer custody of the records to EPA or MDNR.

**XX. EXTENSIONS**

68 Either a timetable and deadline or a schedule shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension. Any request for extension by any Party shall be submitted in writing and shall specify:

68.1 The timetable and deadline or the schedule that is sought to be extended;

69 The length of the extension sought;

69.1 The good cause(s) for the extension; and,

69.2 Any related timetable and deadline or schedule that would be affected if the extension were granted.

70 Good cause exists for an extension when sought in regard to:

70.1 An event of Force Majeure;

70.2 A delay caused by another party's failure to meet any requirement of this AGREEMENT;

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- 70.3 A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;
- 70.4 A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and deadline or schedule; and,
- 70.5 Any other event or series of events mutually agreed to by the PARTIES as constituting good cause.
- 71 Absent agreement of the PARTIES with respect to the existence of good cause, DOE may seek and obtain a determination through the dispute resolution process that good cause exists.
- 72 Within ten working days of receipt of a request for an extension of a timetable and deadline or a schedule, EPA and the MDNR shall advise DOE in writing of its respective position on the request. Any failure by both EPA and the MDNR to respond within the ten-day period shall be deemed to constitute concurrence in the request for extension. If either EPA or the MDNR does not concur in the requested extension, it shall include in its statement of non-concurrence an explanation of the basis for its position.
- 73 If all PARTIES agree that the requested extension is warranted, the affected timetable and deadline or schedule shall be extended accordingly. If there is no agreement among the PARTIES as to whether all or part of the requested extension is warranted, the timetable and deadline or schedule shall not be extended except in accordance with determination resulting from the dispute resolution process.
- 74 Within seven days of receipt of a statement of non-concurrence with the requested extension, DOE may invoke dispute resolution.

75 A timely and good faith request for an extension shall toll any assessment of stipulated penalties or application for judicial enforcement of the affected timetable and deadline or schedule until a decision is reached on whether the requested extension will be approved. If dispute resolution is invoked and the requested extension is denied, stipulated penalties may be assessed and may accrue from the date of the original timetable, deadline or schedule. Following the grant of an extension, an assessment of stipulated penalties or an application for judicial enforcement may be sought only to compel compliance with the timetable and deadline or schedule as most recently extended.

#### **XXI. FORCE MAJEURE**

76 A Force Majeure shall mean any event arising from causes beyond the control of a Party that causes a delay in or prevents the performance of any obligation under this AGREEMENT, including, but not limited to, acts of God; fire; war; insurrection; civil disturbance; explosion; unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance; adverse weather conditions that could not be reasonably anticipated; unusual delay in transportation; restraint by court order or order of public authority; inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than DOE; delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; and, insufficient availability of appropriated funds, if DOE shall have made timely request for such funds as part of the budgetary process as set forth in Section XXX (Funding) of this

AGREEMENT. A Force Majeure shall also include any strike or other labor dispute, whether or not within the control of the PARTIES affected thereby. Force Majeure shall not include increased costs or expenses of Response Actions, whether or not anticipated at the time such Response Actions were initiated.

## XXII. RESOLUTION OF DISPUTES

77 Except as specifically set forth elsewhere in this AGREEMENT, if a dispute arises under this AGREEMENT, the procedures of this Section shall apply. Any dispute which arises under or with respect to this AGREEMENT shall in the first instance be the subject of informal negotiations between the parties to the dispute. All PARTIES to this AGREEMENT shall make reasonable efforts to informally resolve disputes at the Project Manager or immediate supervisor level. The period for informal negotiations shall not exceed twenty (20) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. The written Notice of Dispute shall be sent promptly after either EPA notifies DOE that it has disapproved or approved with conditions a document as provided in Section XI of this AGREEMENT (Consultation with EPA and the MDNR) or any other action which leads to or generates a dispute.

78 In the event that the PARTIES cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 30 days after the conclusion of the informal negotiation period, DOE or the MDNR invoke the formal dispute resolution procedures of this Section by transmitting a



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written Statement of Position to the Dispute Resolution Committee (DRC), thereby elevating the dispute to the DRC for resolution. A written Statement of Position shall include, but not be limited to, the nature of the dispute, the Work affected by the dispute, the disputing Party's position with respect to the dispute, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the disputing Party.

79 The DRC will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The PARTIES shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (SES or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this AGREEMENT. The EPA representative on the DRC is the Director, Superfund Division, EPA Region VII. DOE's designated member is the Director of Land and Site Management, Office of Legacy Management. The MDNR designated representative is MDNR's Director of the Division of Geology and Land Survey. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other PARTIES, pursuant to the procedures of Section XVII (Project Managers).

80 Following elevation of a dispute to the DRC, the DRC shall have twenty-one (21) days, or such other time period as agreed to in writing by the DRC, to unanimously resolve the dispute and issue a written decision. If the DRC is unable to unanimously resolve the dispute within this twenty-one (21) day period or such other time period as agreed to, the

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written Statement of Dispute and any additional documentation related to the dispute

developed during the time period the DRC considered the dispute, shall be forwarded to the Senior Executive Committee (SEC) for resolution.

81 The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The EPA representative on the SEC is the Regional Administrator of EPA's Region VII. DOE's representative on the SEC is DOE's Legacy Management Director. The MDNR representative on the SEC is MDNR's Director. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision. If unanimous resolution of the dispute is not reached within twenty-one (21) days, or such other time period as agreed to by the SEC, EPA's Regional Administrator shall issue a written position on the dispute. The Secretary of DOE or the Director of the MDNR may, within twenty-one (21) days of the Regional Administrator's issuance of EPA's position, issue a written notice elevating the dispute to the Administrator of EPA for resolution in accordance with all applicable laws and procedures. In the event that either DOE or the MDNR elect not to elevate the dispute to the Administrator within the designated twenty-one (21) day escalation period, that Party shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

82 Upon escalation of a dispute to the Administrator of EPA, the Administrator will review and resolve the dispute in a timely manner. Upon request, and prior to resolving the dispute, the EPA Administrator shall meet and confer with the Secretary of Energy and the Director of the MDNR to discuss the issue(s) under dispute. Upon resolution, the

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Administrator shall provide DOE and the MDNR with a written final decision setting forth resolution of the dispute.

83 The pendency of any dispute under this Section shall not affect DOE's responsibility for timely performance of the Work required by this AGREEMENT, except that the time period for completion of Work affected by such dispute shall be extended for a period of time usually not to exceed the actual time taken to resolve any good faith dispute in accordance with the procedures specified herein. All elements of the Work required by this AGREEMENT which are not affected by the dispute shall continue and be completed in accordance with the applicable schedule.

84 When dispute resolution is in progress, Work affected by the dispute will immediately be discontinued if EPA requests, in writing, that Work related to the dispute be stopped, because, in the EPA's opinion, such Work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. The MDNR may request EPA to direct Work be stopped for the reasons set forth above. To the extent possible, the party requesting the work stoppage shall consult with the other PARTIES prior to initiating a work stoppage request. After stoppage of work, if DOE believes that the work stoppage is inappropriate or may have potential significant adverse impacts, DOE may meet with the EPA and the MDNR to discuss the work stoppage. Following this meeting, and further consideration of the issues, EPA will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the EPA may immediately be subjected to formal dispute

resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of DOE.

85 Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this Section, DOE shall incorporate the resolution and final determination into the appropriate plan, schedule or procedures and proceed to implement this AGREEMENT according to the amended plan, schedule or procedures.

86 Resolution of a dispute pursuant to this Section of the AGREEMENT constitutes a final resolution of any dispute arising under this AGREEMENT. All PARTIES shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Section of this AGREEMENT.

### **XXIII. STIPULATED PENALTIES**

87 In the event that DOE fails to submit a document subject to review and approval by EPA pursuant to the appropriate timetable or deadline in accordance with the requirements of this AGREEMENT, or fails to properly cure a document as provided in Section XI (Consultation with EPA and the MDNR) or fails to comply with a term or condition of this AGREEMENT, EPA may assess a stipulated penalty against DOE. A stipulated penalty may be assessed in an amount not to exceed \$5,000 for the first week (or part thereof), and \$10,000 for each additional week (or part thereof) for which a failure set forth in this Paragraph occurs.

88 Upon determining that DOE has failed in a manner set forth in Paragraph 87, EPA shall so notify DOE in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, DOE shall have fifteen (15) days after

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receipt of the notice to send the other PARTIES a written Notice of Dispute with respect to the question of whether the failure did in fact occur. DOE shall not be liable for the stipulated penalty assessed by EPA if the failure is determined, through the dispute resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

89 The annual reports required by Section 120(e)(5) of CERCLA, 42 U.S.C. § 9620(e)(5), shall include, with respect to each final assessment of a stipulated penalty against DOE under this AGREEMENT, each of the following:

89.1 The facility responsible for the failure;

89.2 A statement of the facts and circumstances giving rise to the failure;

89.3 A statement of any administrative or other corrective action taken at the relevant facility, or a statement of why such measures were determined to be inappropriate;

89.4 A statement of any additional action taken by or at the facility to prevent recurrence of the same type of failure; and,

89.5 The total dollar amount of the stipulated penalty assessed for the particular failure.

90 Stipulated penalties assessed pursuant to this Section shall be payable to the Hazardous Substances Response Trust Fund from funds authorized and appropriated for that specific purpose.

91 In no event shall this Section give rise to a stipulated penalty in excess of the amount set forth in Section 109 of CERCLA, 42 U.S.C. § 9609.

92 This Section shall not affect DOE's ability to obtain an extension of a timetable, deadline

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or schedule pursuant to Section XX (Extensions) of this AGREEMENT.

93 Nothing in this AGREEMENT shall be construed to render any officer or employee of DOE personally liable for the payment of any stipulated penalty assessed pursuant to this Section.

#### **XXIV. OTHER APPLICABLE LAWS**

94 Except as otherwise provided in Section XXVII (Permits), below, with regard to permits, all actions required to be taken pursuant to this AGREEMENT shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations, including, but not limited to, any permitting or licensing requirements.

95 All reports, plans, specifications, and schedules which become final pursuant to this AGREEMENT are incorporated into this AGREEMENT. Any noncompliance with such final reports, plans, specifications, or schedules shall be considered a failure to achieve compliance with the requirements of this AGREEMENT.

#### **XXV. RESERVATION OF RIGHTS**

96 In consideration for DOE's compliance with this AGREEMENT, and based on the information known to the PARTIES on the effective date of this AGREEMENT, EPA, the MDNR and DOE agree that, except as provided below, compliance with this AGREEMENT shall stand in lieu of any administrative, legal and equitable remedies against DOE available to EPA or the MDNR regarding currently known releases or threatened releases of hazardous substances at the SITE which are within the scope of this AGREEMENT. However, nothing in this AGREEMENT shall preclude EPA or the MDNR from exercising any administrative, legal, or equitable remedies available to it in

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the event that:

- 96.1 DOE fails to comply with a requirement of this AGREEMENT;
- 96.2 Either conditions previously unknown or undetected by EPA or the MDNR arise or are discovered at the Site or EPA or the MDNR receives information not previously available concerning the premises it employed in reaching this AGREEMENT; or
- 96.3 The implementation of the requirements of this AGREEMENT are no longer protective of public health and the environment.
- 97 Notwithstanding compliance with the terms of this AGREEMENT, DOE is not released from liability, if any, for any actions beyond the terms of this AGREEMENT with respect to the SITE. With respect to actions beyond the terms of this AGREEMENT, EPA and the MDNR reserve the right to take any enforcement action pursuant to CERCLA and/or any other available legal authority for relief including, but not limited to, injunctive relief, monetary penalties, and punitive damages for any violation of law.
- 98 EPA and the MDNR reserve such rights as they may have to undertake response action(s) to address the release or threat of release of hazardous substances from the Site at any time and, to the extent permitted by law, to seek reimbursement from DOE thereafter for such costs incurred.
- 99 EPA and the MDNR reserve the right to take enforcement action against any person not a party to this AGREEMENT, as appropriate, to maintain the protective use of land and natural resources subject to institutional controls enacted pursuant to this AGREEMENT.
- 100 In the event of any action by EPA and the MDNR under Section XXIX (Enforceability), DOE reserves all rights and defenses under law.

## XXVI. OTHER CLAIMS

- 101 Nothing in this AGREEMENT shall constitute or be construed as a bar or release from any claim, cause of action or demand in law or equity by or against any person, firm, partnership or corporation not a signatory to this AGREEMENT for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the SITE.
- 102 The EPA and the MDNR shall not be held as a party to any contract entered into by DOE to implement the requirements of this AGREEMENT. Nor shall DOE be held as a party to any contract entered into by EPA or the MDNR to implement the requirements of this AGREEMENT.
- 103 This AGREEMENT shall not restrict EPA or the MDNR from taking any legal or response action for any matter not specifically part of the Work covered by this AGREEMENT.
- 104 Nothing in this AGREEMENT shall be considered an admission by any Party with respect to any claim(s) by a person not a party to this AGREEMENT, other than in a proceeding specified in Section XXIX (Enforceability) of this AGREEMENT, or with respect to any unrelated claim(s) by a Party.

## XXVII. PERMITS

- 105 As provided in Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), no Federal, State, or local permit shall be required for those portions of the response actions undertaken pursuant to this AGREEMENT which are conducted entirely onsite. Such onsite



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response actions must satisfy all applicable or relevant and appropriate Federal and state standards, requirements, criteria, or limitations which would have been included in any such permit.

106 If a permit which is necessary for implementation of this AGREEMENT is not issued, or is issued or renewed in a manner which is materially inconsistent with the requirements of this AGREEMENT, DOE shall notify EPA and the MDNR in writing of its intention to propose modifications to this AGREEMENT to obtain conformance with the permit (or lack thereof). Notification by DOE of its intention to propose modifications shall be submitted within seven (7) calendar days of receipt by it of notification that: (1) a permit will not be issued; (2) a permit has been issued or reissued; or, (3) a final determination with respect to any appeal related to the issuance of a permit has been entered. Within thirty (30) days from the date it submits its notice of intention to propose modifications, DOE shall submit to the EPA and the MDNR its proposed modifications to this AGREEMENT with an explanation of its reasons in support thereof. Such proposed modifications to this AGREEMENT will be reviewed in accordance with Section XXXI (Amendment of the Agreement) of this AGREEMENT.

107 If DOE submits proposed modifications prior to a final determination of any appeal taken on a permit needed to implement this AGREEMENT, EPA and the MDNR may elect to delay review of the proposed modifications until after such final determination is entered.

108 During any appeal of any permit required to implement this AGREEMENT or during review of any of DOE's proposed modifications as provided in Paragraph 107, above, DOE shall continue to implement those portions of this AGREEMENT which can be

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reasonably implemented pending final resolution of the permit issue(s).

- 109 Except as otherwise provided in this AGREEMENT, DOE shall comply with applicable State and Federal hazardous waste management requirements at the site.

**XXVIII. PUBLIC COMMENT ON THIS AGREEMENT**

- 110 Within fifteen (15) days of the date it receives a fully executed copy of this AGREEMENT, EPA shall announce the availability of this AGREEMENT to the public for review and comment. EPA shall accept comments from the public for a period of thirty (30) days after such announcement. Upon completion of the comment period, EPA shall promptly provide copies of all comments to DOE and the MDNR.

- 111 Upon completion of the public comment period, each of the PARTIES shall review all such comments and shall either:

111.1 Determine that this AGREEMENT should be made effective in its present form; or,

111.2 Determine that modification of the AGREEMENT is necessary.

- 112 In the event of significant revision or public comment, notice procedures of Sections 117 of CERCLA, 42 U.S.C. § 9617, shall be followed and a responsiveness summary shall be published by the EPA.

- 113 Any Party that determines modification of the AGREEMENT is necessary shall provide a written request for modification to each of the other PARTIES. This request for modification shall be made within twenty (20) days of the date that Party received copies of the comments from EPA, or, in the event EPA requests modifications, within twenty (20) days of the date the comments were provided to the other PARTIES. The request for modification shall include:

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- 113.1 A statement of the basis for determining the modification is necessary, and
- 113.2 Proposed revisions to the AGREEMENT addressing the modification.
- 114 If no request for modification is made within the time period specified above, this AGREEMENT shall be made effective in its present form in accordance with Section XXXIV(Effective Date) hereof.
- 115 If any Party requests modification of the AGREEMENT as provided above, the PARTIES shall promptly meet to discuss the proposed modification. If the PARTIES agree on the modification, the AGREEMENT shall be revised, in writing, in accordance with the agreed upon modification. The revised AGREEMENT shall be signed by representatives of each Party and shall be made effective in accordance with Section XXXIV (Effective Date) hereof. If the PARTIES are unable to agree upon such modifications, any Party reserves the right to withdraw from the AGREEMENT. Before any Party exercises its right to withdraw from the AGREEMENT, it shall make its SEC representative, as identified in Section XXII (Resolution of Disputes) hereof, available to meet with the other PARTIES' SEC representatives to discuss the withdrawal.

**XXIX. ENFORCEABILITY**

- 116 The PARTIES agree that:
- 116.1 Upon the effective date of this AGREEMENT, any standard, regulation, condition, requirement or order which has become effective under CERCLA and is incorporated into this AGREEMENT is enforceable by any person pursuant to Section 310 of CERCLA, 42 U.S.C. § 9659, and any violation of such standard, regulation, condition, requirement or order will be subject to civil penalties under Sections 310(c) and 109 of

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CERCLA, 42 U.S.C. § 9659(c) and 9609;

- 116.2 All timetables or deadlines shall be enforceable by any person pursuant to Section 310 of CERCLA, and any violation of such timetables or deadlines will be subject to civil penalties under Sections 310(c) and 109 of CERCLA, 42 U.S.C. § 9659(c) and 9609;
- 116.3 All terms and conditions of this AGREEMENT shall be enforceable by any person pursuant to Section 310(c) of CERCLA, 42 U.S.C. § 9659(c), and any violation of such terms or conditions will be subject to civil penalties under Sections 310(c) and 109 of CERCLA, 42 U.S.C. § 9659(c) and 9609; and,
- 116.4 Any final resolution of a dispute pursuant to Section XXII (Resolution of Disputes) of this AGREEMENT which establishes a term, condition, timetable, deadline or schedule shall be enforceable by any person pursuant to Section 310(c) of CERCLA, 42 U.S.C. § 9659(c), and any violation of such term, condition, timetable, deadline or schedule will be subject to civil penalties under Sections 310(c) and 109 of CERCLA, 42 U.S.C. § 9659(c) and 9609.
- 117 Nothing in this AGREEMENT shall be construed as authorizing any person to seek judicial review of any action or Work where review is barred by any provision of CERCLA, including Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).
- 118 Nothing in this AGREEMENT shall be construed as a restriction or waiver of any rights the EPA or the MDNR may have under CERCLA, including but not limited to any rights under Sections 113 and 310, 42 U.S.C. §§ 9613 and 9659. The DOE does not waive any rights it may have under CERCLA Section 120, 42 U.S.C. § 9620, and Executive Order 12580.

119 The PARTIES agree to exhaust their rights under Section XXII (Resolution of Disputes) prior to exercising any rights to judicial review that they may have.

120 The PARTIES agree that all PARTIES shall have the right to enforce the terms of this AGREEMENT.

### **XXX. FUNDING**

121 DOE shall use its best efforts and take all necessary steps to obtain timely funding to meet its obligations under this Agreement. On at least an annual basis, DOE shall submit to EPA and the MDNR, for review and comment, a list of the activities it has planned for the next fiscal year and its estimate of the cost of those activities. The timing of this review will be coordinated with DOE's budget process to give EPA and the MDNR the opportunity to comment on the activities and cost estimate before DOE submits its budget proposal.

122 No provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted. DOE and U.S. EPA agree that any requirement for the payment or obligation of funds by DOE established by the terms of the AGREEMENT shall be subject to the availability funds.

123 If funding is requested as described in this Section, and if appropriated funds are not available to fulfill DOE's obligations under this AGREEMENT, the PARTIES shall attempt to agree upon appropriate adjustments to the dates that require the payment or

obligation of such funds. In any action by EPA or the MDNR to enforce any provision of this AGREEMENT, DOE may raise as a defense that its failure or delay was caused by the unavailability of appropriated funds.

#### **XXXI. AMENDMENT OF THE AGREEMENT**

124 This AGREEMENT may be amended by a written agreement of the PARTIES hereto. No such amendment shall be final until signed by all PARTIES.

#### **XXXII. APPENDICES**

125 The following appendices are attached to and incorporated into this AGREEMENT:  
Appendix A– Weldon Spring Site Long-Term Surveillance & Maintenance Plan

#### **XXXIII. TERMINATION**

126 The provisions of this AGREEMENT shall be deemed satisfied and terminated upon receipt by DOE of written notice from EPA and the MDNR that, except for the continuing obligations specified below, DOE has demonstrated, to the satisfaction of the EPA and the MDNR that no further long-term surveillance or maintenance or other activities are necessary to protect the human health or the environment at the SITE. Continuing obligations, including those under Section XIX (Record Preservation), Section XXV (Reservation of Rights) and Section X (Periodic Review), shall not be affected by this notice.

127 This AGREEMENT may be terminated by the consent of all PARTIES at any time.

#### **XXXIV. EFFECTIVE DATE**

128 This AGREEMENT may be executed in any number of counterparts, each of which, when executed and delivered to EPA shall be deemed to be an original, but such

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counterparts shall together constitute one and the same document.

129 This AGREEMENT is effective upon issuance of a notice to DOE and the MDNR by EPA, following implementation of Section XXVIII (Public Comment), above, of this AGREEMENT.

IN WITNESS WHEREOF, the PARTIES have affixed their signatures below:

Weldon Spring Site  
Federal Facility Agreement

For the United States Department of Energy:



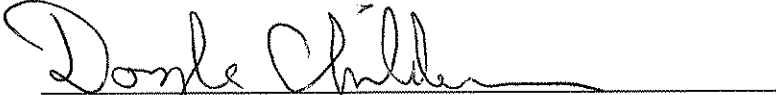
Michael W. Owen, Director  
Office of Legacy Management  
U.S. Department of Energy  
Washington, D.C.

12/20/05  
Date



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For the Missouri Department of Natural Resources:

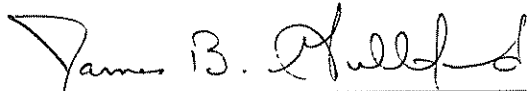


Doyle Childers, Director  
Missouri Department of Natural Resources  
Jefferson City, Missouri

12-20-05  
Date

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For the United States Environmental Protection Agency, Region VII:



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James B. Gulliford  
Regional Administrator  
U. S. Environmental Protection Agency  
Region VII  
Kansas City, Kansas

3/31/06

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Date

IN THE MATTER OF The United States Department of Energy's Weldon Spring Site,  
Respondent  
Docket No. CERCLA-07-2006-0161

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Federal Facility Agreement for the Weldon Spring Site was sent this day in the following manner to the addressees:

Copy hand delivered to:

Daniel J. Shiel  
Senior Assistant Regional Counsel  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Thomas Pauling  
U.S. Department of Energy  
2597 B ¾ Road  
Grand Junction, Colorado 81503

Larry Erickson  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, Missouri 65102-0176

9/28/06  
Dated

  
Kathy Robinson  
Hearing Clerk, Region 7